Supreme Court, U.S.
FILED

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No. 94-

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1994

MELODY DAVILA, *et al*,

Petitioners,

vs.

COUNTY OF LOS ANGELES, *et al*,

Respondents.

PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME COURT
FOR THE STATE OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

HUGH R. MANES, *Counsel of Record*
CAROL A. WATSON
MANES & WATSON
Attorneys for Petitioner
3600 Wilshire Boulevard
Suite 1710
Los Angeles, California 90010
(213) 381-7793

QUESTIONS PRESENTED

May a state court prohibit civil rights plaintiffs from having a hearing on the merits of their federal civil rights claim against individual law enforcement officers by imposing a heightened pleading standard?

May a state law requiring greater specificity in pleadings than is required under federal law be used to dismiss federal civil rights claims brought in state court?

LIST OF PARTIES

Petitioners Melody Davila, Jo Ann Davila, Carmen and Greg Davila were plaintiffs and appellants in the courts below. They are the daughter, wife, and parents, respectively, of Henry Davila, deceased. Respondents Michael Rodriguez, Jeffrey Lammers, and Michael Dimarzo were defendants and appellees in the courts below. They are deputy sheriffs employed by the County of Los Angeles.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1994

MELODY DAVILA, *et al*,

Petitioners,

vs.

COUNTY OF LOS ANGELES, *et al*,

Respondents.

Petitioners respectfully pray that a Writ of Certiorari issue to review the judgment of the California Supreme Court which was based upon the unpublished opinion of the California Court of Appeal.

OPINION BELOW

The opinion of the California Court of Appeal appears in the Appendix [Apx], B. The California Supreme Court denied review. Apx. A.

JURISDICTION

The judgment and opinion of the California Court of Appeal was filed on October 11, 1994. A timely petition for review in the California Supreme Court was denied on January 4, 1995. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U. S. C. §1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Rule 8(a), Federal Rules of Civil Procedure:

> A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

STATEMENT OF THE CASE

Petitioners, the sole heirs and representatives of Henry Davila, filed a complaint for damages alleging a state law claim for wrongful death[1] and claims under 42 U.S.C. §1983 for the deprivation of their right to a familial relationship with Henry Davila and for his deprivation of life.

Petitioners twice amended their original complaint

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[1]The wrongful death claim has been dismissed by the state court by virtue of its ruling that the deputy sheriffs are insulated from liability by state law immunity.

pursuant to rulings that are not material here. Each amendment added further factual specificity. When the trial court again ruled that the facts alleged in petitioners' second amended complaint were insufficient to state a claim, petitioners declined to amend and instead appealed.

The California Court of Appeal ruled that the civil rights claims lacked "the factual specifity required by the courts in a civil rights action." The court said, "plaintiffs merely have pleaded that the individual defendants acted with deliberate indifference toward decedent's life." The second amended complaint is found at Apx. C.

The factual allegations rejected as insufficient were as follows. See Apx. C, pages 6-7.

> At or about the aforementioned time, date and place, defendants RODRIGUEZ, DIMARZO, LAMMERS, and DOES 1-10 deprived plaintiffs[2] of rights, privileges and immunities guaranteed by the Fourteenth Amendment to the United States Constitution in that defendants arrested and detained and imprisoned decedent for public intoxication on the grounds that he was so intoxicated that he was unable to care for his own safety or the safety of others; defendants

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[2]The allegations stating decedent's claim for violation of his constitutional right to life are identical except the claim is based on the Fourth and Fourteenth Amendments to the United States Constitution.

were called to the scene because of decedent's inebriated state, and they assumed complete custody and control of decedent by handcuffing him and locking him in their patrol car so that no other person could render assistance to decedent who was extremely intoxicated; having established a special relationship with decedent, defendants took him from Motel 6, the location where he had been residing and was known to other occupants, and although they knew that his roommate was present and able to care for him, defendants transported him to a location at and near 12056 Whittier Boulevard in the City of Whittier, a heavily-traveled traffic artery, where, notwithstanding his obvious inability to care for his own safety or the safety of others, defendants knowingly, intentionally and with reckless disregard of and deliberate indifference to the rights of plaintiffs, defendants released and ejected decedent from their patrol car and abandoned him notwithstanding his obvious inability to care for his own safety or the safety of others, and knowing that decedent was so disabled, they placed him in a position of peril and increased the risk of harm to him; and as a proximate result thereof, decedent was killed by a passing automobile shortly thereafter.

REASON FOR GRANTING THE WRIT

The State Court Should Not Be Permitted to Dispose of Federal Civil Rights Claims by Imposing Heightened Pleading Requirements That Are Inconsistent With Federal Pleading Requirements.

There are two questions to be addressed in deciding what standard should be applied in judging the sufficiency of the allegations in the second amended complaint. First, does federal law impose more stringent pleading requirements on civil rights plaintiffs than it does on other plaintiffs? Second, can the pleading requirements of state law be used to impose a greater burden on a civil rights plaintiff in state court than would be required of that plaintiff in federal court? It is respectfully submitted that the answer to both questions is no.

In *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, ___ U.S. ___, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993), this Court rejected the argument that federal law imposes a "heightened" pleading standard on a plaintiff in federal court who alleges a claim against a municipality for violation of civil rights. Noting that the system of "notice pleading" prescribed by Rule 8 of the Federal Rules of Civil Procedure requires nothing more than "a short and plain statement of the claim" the Court reversed the dismissal of complaints that were deemed insufficient. The Court expressly criticized *Elliott v. Perez*, 751 F.2d 1472 (5th Cir., 1985) for adopting a more demanding rule for pleading a complaint under §1983 than for pleading other kinds of claims for relief.

The California Court of Appeal improperly applied a heightened standard when it held that petitioners had not complied with the factual specificity required in civil rights cases. Apx. B-10. The court relied on *Newton v. County of Napa* (1990) 217 Cal.App.3d 1551, 266 Cal.Rptr. 262, which in turn relied on the now discredited opinion in *Elliott, supra.* That misplaced reliance is being used to deprive petitioners of a trial on the merits of their claims.

To state a claim under §1983, petitioners need only allege (1) a violation of a constitutional right (2) by a person acting under color of law. *Gomez v. Toledo*, 446 U.S. 635, 100 S.Ct. 1920, 1923, 64 L.Ed.2d 572. A §1983 action may be dismissed for failure to state a claim only if it "appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957).

The dismissal of petitioners' complaint should be reversed because the state court used an impermissible standard in determining whether petitioners had stated a claim.

The second aspect of the applicable pleading standard is whether California's system of "code pleading" can be used to impose a more stringent pleading standard on civil rights plaintiffs in state court than is required of civil rights plaintiffs in federal court.

The California Court of Appeal acknowledged that federal law should be applied in determining the sufficiency of a civil rights pleading. However, it is clear that if the court had

applied federal law, it could not have dismissed petitioners' claims.

Moreover, in *Bach v. County of Butte* (1983) 147 Cal.App.3d 554, 561, 195 Cal.Rptr. 268, 272, the court noted that California courts have assumed that California pleading law should be applied to test the adequacy of a complaint brought under the federal civil rights act. The court recited the general rule that state law controls in matters of practice and procedure where an action founded on a federal statute is brought in state court unless there is contrary federal law. The court ultimately held that federal law should be used to determine the sufficiency of a claim brought under 42 U.S.C. §1983 *(Ibid., p. 563)* but the discussion manifests a lack of uniformity in the courts on this question.

The general rule articulate in *Bach* conflicts with this Court's decision in *Felder v. Casey*, 487 U.S. 131, 108 S.Ct. 2302 (1988) that states may not use procedural devices that conflict with the remedial objectives of §1983 or that produce different outcomes based solely on whether the claim is filed in state or federal court. In *Brown v. Western Railway of Alabama*, 338 U.S. 294, 70 S.Ct. 105, 94 L.Ed 100 (1949) the Court held that local pleading rules are such a device that cannot be permitted to infringe on federal rights. The California Supreme Court has recognized that state law may not be used to frustrate the federal purposes underlying §1983 by imposing substantive limitations couched in procedural language (*Williams v. Horvath* (1976) 16 Cal.3d 834, 841, 129 Cal.Rptr. 453) but it declined to adhere to it in this case.

This Court should eliminate any conflict or ambiguity in the law governing the sufficiency of pleadings in §1983 actions brought in state court by unequivocally rejecting a heightened pleading standard under federal or state law.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Hugh R. Manes, *Counsel of Record*
Carol A. Watson
Manes & Watson
Attorneys for petitioners

Second Appellate District, Division One, No. B079467
S043421

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

MELODY DAVILA Et Al., Appellants

v.

COUNTY OF LOS ANGELES Et Al., Respondents

SUPREME COURT
FILED
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Petition for review DENIED.

LUCAS

Chief Justice

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

MELODY DAVILA et al.,	)	BO62294
	)	(Super.Ct.No. VC002724)
Plaintiffs and Appellants,	)	
	)	
v.	)	
	)	
COUNTY OF LOS ANGELES et al.,	)	
	)	
Defendants and Respondents.	)	
	)	

APPEAL from an order of the Superior Court of Los Angeles County, James W. Edson, Judge. Reversed and remanded with directions.

Manes & Watson and Carol A. Watson, for Plaintiffs and Appellants.

De Witt W. Clinton, County Counsel and Anthony P. Serritella and Nohemi G. Ferguson, for Defendants and Respondents.

We reverse an order of dismissal entered after the trial court sustained a demurrer to a first amended complaint without leave to amend, and remand with directions to permit amendment.

FACTS

By their first amended complaint for damages (filed after demurrers were sustained to their original complaint), Melody, Jo Ann, Carmen and Greg Davila sued Los Angeles county Deputy Sheriffs Michael Rodrigez, Michael Dimarzo and Jeffrey Lammers for civil rights violations (42 U.S.C. § 1983) and wrongful death (Code Civ. Proc., § 377) and alleged the following facts.

Henry G. Davila was Jo Ann's husband, Melody's father, and the son of Carmen and Greg Davila. On March 10, 1990, Defendants arrested Henry Davila "and removed him from a [motel] where they knew he resided and was known to other occupants, and although they knew that his roommate was present and able to care for him," transported him "to a different and extremely hazardous location," and with "reckless disregard" later "ejected him from their patrol car notwithstanding his obvious inability to care for his own safety," as a proximate result of which he was killed by a

passing automobile.[3] By reason of these acts, Davila was "deprived of his life and thereby sustained economic and hedonic [sic] losses" and Plaintiffs incurred funeral and other expenses.

Defendants' demurrer to the amended pleading was sustained without leave to amend and this appeal followed.

DISCUSSION

Plaintiffs contend that Defendants owed a duty of due care to decedent and to his heirs, that Defendants are not immune, and that causes of action for wrongful death and civil rights violations have been sufficiently pleaded. We do not agree, but we do believe that leave should be granted to give Plaintiffs one more opportunity to amend their pleading.

When the trial court sustained the demurrer to the original complaint, it did so without leave to amend the wrongful death cause of action but with leave to amend the civil rights cause of action. Based on the allegations that Davila was "arrested" and then released under circumstances where he was exposed to danger, the trial court found the

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[3] Although the reason for Davila's inability to care for himself was omitted from the first amended complaint, the original complaint explained that he was intoxicated.

County of Los Angeles (which was named in the original complaint but dropped form the first amended pleading) and the deputies were immune under sections 820.2 and 846 of the Government Code.[4] As to the civil rights cause of action, the trial court found the allegations were too conclusory and granted leave to amend to allege specific facts showing the Defendants acted recklessly.

For reasons we do not understand, Plaintiffs' counsel amended the complaint by eliminating facts relevant to both causes of action (e.g., the fact that Davila was intoxicated). And notwithstanding the trial court's order sustaining the demurrer to the wrongful death cause of action without leave to amend, the first amended complaint continued to plead two separate causes of action, the first entitled "Decedent's claim vs. all defendants" instead of "wrongful death" and the second entitled "Plaintiffs' claim vs. all defendants." Facts showing reckless conduct are still not alleged.

On the immunity issue, all of the cases cited by the

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[4] Unless otherwise stated, all section references are to the Government Code. Section 820.2 immunizes public employees when an injury results from an act or omission which was the result of the employee's exercise of discretion. Section 846 immunizes peace officers when an injury is caused by their failure to retain an arrested person in custody.

parties are factually distinguishable. (See Duarte v. City of San Jose (1980) 100 Cal.App.3d 648, 653-654; Truong v. James (1985) 168 Cal.App.3d 833, 835; Harris v. Smith (1984) 157 Cal.App.3d 100; Stout v. City of Porterville (1983) 148 Cal.App.3d 937, 946-948; Mann v. State of California (1977) 70 Cal.App.3d 773, 778; Winterburn v. City of Pomona (1986) 186 Cal.App.3d 878, 882.) Our initial review of the record in this case left us with the nagging feeling (although our own cursory review has revealed no pertinent authority) that there may be some limitation on the section 846 immunity. Our consideration of this issue was hampered by the absence of any meaningful factual information and we therefore asked counsel, at oral argument, to tell us what had happened to Davila.

What we learned as a result of this inquiry is that Davila may not have actually been arrested at all. According to the police report of the accident (which counsel for the County lodged after argument and which both attorney stipulated we might consider in reaching our decision), this is what happened. Marsha Lee Archer's car struck and killed Davila when he "jumped" from the bushes at the side of Whittier Boulevard in front of Archer's oncoming car. Preliminary reports from the hospital indicated that, at the time of his death, Davila's blood alcohol level was

approximately .11 percent and he tested positive for cocaine, heroin and barbiturates.

Davila's mother and father directed the officers who investigated the accident to a motel where Davila had been staying with a friend, a man later identified as Albert Jimenez. Jimenez told the officers that Davila had been out "partying" the night before the accident and, on his return, had "appeared to be very drunk." Davila slept for awhile, then went out for awhile and returned to the motel in the late afternoon. Davila was "very irate" and began collecting his personal belongings. Jimenez' efforts to calm Davila were unsuccessful. Davila left the room, began pounding on the doors and windows of adjacent rooms, and was ultimately subdued and restrained by the motel's manager.

According to Jimenez, he watched "two deputy sheriffs approach Davila placing him under arrest and handcuffing him." Davila was placed in a police vehicle and taken from the motel. According to the manager of the motel, a "deputy arrested [Davila] and placed him in the patrol vehicle." The manager described Davila as "very inebriated" and "also very irate and combative."

According to a "memo" from the deputies involved at

the motel, when Deputies Michael Rodrigez and Michael Dimarzo arrived at the motel, Deputy Jeffrey Lammers had detained Davila because he had been involved "in a verbal altercation with another male [but] no crime had occurred. Rodrigez indicated that he could smell an odor of alcohol on [Davila's] breath but did not feel he was under the influence to a degree that it impaired his normal behavior. Rodrigez went on to say that [Davila] asked for a ride home to an address a[t] 7337 Whittier Ave. . . . Deputies Rodrigez and Dimarzo transported [Davila] to the area of Whittier Blvd. and Penn St., leaving him at that intersection at approx. 1805 hours. They dropped him off at that intersection as [Davila] informed them that it would be embarrassing if his wife saw them bring him home."

Although the police report leaves a lot of questions unanswered, it does suggest that Davila might not have been actually arrested. It also shows the evidence is wholly inconsistent about how intoxicated Davila was at the time he was taken from the motel.

Because these facts were not pleaded, the parties have not addressed the question whether the immunity rules apply if Davila was not, in fact, arrested. And they have not addressed the question whether particularly egregious

conduct by the officers might give rise to an exception to the immunity otherwise available to the officers. For example, if Davila was an intoxicated as some of the evidence suggests, reasonable minds might conclude that the officers discarded their cloak of immunity when they dropped him off at a busy intersection. On the other hand, the immunity might still be available, for policy reasons, without regard to the nature of the officers' conduct or whether Davila was actually arrested.

These issues were not developed by the County or the officers because the relevant facts were not pleaded. Despite our questioning at oral argument, it remains unclear to us why Plaintiffs' counsel failed to plead these facts and pursue all available theories and it is impossible for us to understand why the critical fact of intoxication was dropped from the first amended complaint. Moreover, the responses by Plaintiffs' counsel at argument suggest she does not understand that different rules (and different exceptions) might apply if, in fact, Davila was not arrested. For these reasons, basic concepts of fairness compel us to give Plaintiffs one more opportunity to amend to allege all of the available facts and theories, after which the County and the officers may, of course, assert their claims of immunity and all other defenses. The true legal merit of Plaintiffs' claims can then be considered. (See England v. Christensen (1966)

243 Cal.App.2d 413, 435 [remand proper for trial court to receive such additional material as it may deem necessary or advisable to determine merits of claims involved in case].)

DISPOSITION

The orders sustaining the demurrers to the wrongful death and civil rights causes of action are reversed and the matter is remanded to the trial court with directions to enter a new order sustaining the demurrers to the original causes of action with leave to amend and to afford Plaintiffs an opportunity to allege all available facts and theories against the County and the individual officers. The parties are to pay their own costs of appeal.

NOT TO BE PUBLISHED.

VOGEL, J.

We concur:

SPENCER, P.J.

ORGEGA, J.

Carol a. Watson
Manes & Watson
3600 Wilshire Boulevard
Suite 1710
Los Angeles, CA 90010
Telephone: (213) 381-7793
Attorneys for Plaintiffs

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MAR 1 9 1993

SOUTHEAST DISTRICT.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MELODY DAVILA, JO ANN DAVILA, CARMEN DAVILA, GREG DAVILA, Plaintiffs, vs. COUNTY OF LOS ANGELES, a public entity, MICHAEL RODRIGUEZ, MICHAEL DIMARZO, JEFFREY LAMMERS, individually and as deputy sheriffs, DOES 1-10, inclusive, Defendants.	CASE NO: VC 002724 SECOND AMENDED COMPLAINT FOR DAMAGES 1. Wrongful Death, CCP§377 2. Violation of Decedent's Federal Civil Rights 3. Violation of Plaintiffs' Federal Civil Rights

First Cause of Action
Wrongful Death
(All Plaintiffs vs. All Defendants)

1. Plaintiff MELODY DAVILA is, and at all times

material herein was, the natural daughter of decedent HENRY G. DAVILA.

2. Plaintiff JO ANN DAVILA is, and at all times material herein was, the lawful wife of decedent HENRY G. DAVILA.

3. Plaintiffs GREG and CARMEN DAVILA are, and at all times material herein were, the father and mother, respectively, of decedent HENRY G. DAVILA [hereinafter referred to as decedent.]

4. Plaintiffs are the sole heirs and personal representatives of decedent and they sue herein as individuals and as personal representatives of decedent.

5. The true names of defendants DOE 1-10 are not now known to plaintiffs who therefore sue said defendants by such fictitious names, but upon ascertaining the true name of a Doe defendant, plaintiffs will amend this complaint, or seek leave to do so, by substituting same for such fictitious name.

6. Defendant COUNTY OF LOS ANGELES is, and at all times material herein was, a public entity duly organized and existing as such under the laws of and in the State of California.

7. At all times material herein, defendants MICHAEL RODRIGUEZ, Ser.No. 225772, MICHAEL DIMARZO, Ser.No. 218485, JEFFREY LAMMERS, Ser.No.

219153, and DOES 1-10 were each duly appointed, qualified and acting deputy sheriffs employed as such by defendant COUNTY OF LOS ANGELES and at all times herein mentioned, were each acting in the course and scope of such employment and under color of law.

8. At all times material herein, each defendant was acting as the employee, agent, representative and officer of every other defendant, and within the course and scope of such employment and agency.

9. On August 23, 1990, plaintiffs presented a claim for damages to the Board of Supervisors of defendant COUNTY OF LOS ANGELES, pursuant to Government Code §910 et seq., and in substantial compliance therewith. Said claim was denied on or about October 26, 1990.

10. The acts, omissions and events herein described and complained of occurred on or about March 10, 1990 at approximately 6:00 to 7:00 P.M. beginning at Motel 6, located at and near the intersection of Pioneer and Washington Boulevards in the County of Los Angeles, California, and subsequently at and near 12056 Whittier Boulevard in the City of Whittier, California.

11. At said time, date and place, decedent was arrested and detained and imprisoned by defendants for public intoxication on the grounds that he was so intoxicated that he was unable to care for his own safety or the safety of others; defendants were called to the scene because of decedent's inebriated state, and they assumed complete

custody and control of decedent by handcuffing him and locking him in their patrol car so that no other person could render assistance to decedent who was extremely intoxicated; having established a special relationship with decedent, defendants took him from Motel 6, the location where he had been residing and was known to other occupants, and although they knew that his roommate was present and able to care for him, defendants transported him to a location at and near 12056 Whittier Boulevard in the City of Whittier, a heavily-traveled traffic artery, where, notwithstanding his obvious inability to care for his own safety or the safety of others, defendants knowingly, intentionally and negligently released and ejected him from their patrol car and abandoned him notwithstanding his obvious inability to care for his own safety or the safety of others, and knowing that decedent was so disabled, they placed him in a position of peril and increased the risk of harm to him; and as a proximate result thereof, decedent was killed by a passing automobile shortly thereafter.

12. By reason of the aforedescribed acts and omissions of defendants, plaintiffs have been and will forever be deprived of the love, affection, society, companionship, support and pecuniary benefits of decedent, and of their familial relationship with him, all to plaintiffs' damage in an amount to be proved.

13. By reason of the aforedescribed acts and omissions of defendants, plaintiffs were required to and did incur funeral, burial, and incidental expense in an amount as proved.

Second Cause of Action

Violation of Decedent's Civil Rights, U.S.C. §1983

(All Plaintiffs vs. All Individual Defendants)

14. Plaintiffs replead each and every allegation contained in paragraphs 1 through 10, and by this reference, incorporate the same herein and make each a part hereof.

15. At or about the aforementioned time, date and place, defendants RODRIGUEZ, DIMARZO, LAMMERS, and DOES 1-10 deprived decedent of rights, privileges and immunities guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution in that defendants arrested and detained and imprisoned decedent for public intoxication on the grounds that he was so intoxicated that he was unable to care for his own safety or the safety of others; defendants were called to the scene because of decedent's inebriated state, and they assumed complete custody and control of decedent by handcuffing him and locking him in their patrol car so that no other person could render assistance to decedent who was extremely intoxicated; having established a special relationship with decedent, defendants took him from Motel 6, the location where he had been residing and was known to other occupants, and although they knew that his roommate was present and able to care for him, defendants transported him to a location at and near 12056 Whittier Boulevard in the City of Whittier, a heavily-traveled traffic artery, where, notwithstanding his obvious inability to care for his own safety or the safety of others, defendants knowingly, intentionally and with reckless disregard of and deliberate indifference to

the rights of decedent, including his right to life, defendants released and abandoned and ejected him from their patrol car notwithstanding his obvious inability to care for his own safety or the safety of others, and knowing that decedent was so disabled, they placed him in a position of peril and increased the risk of harm to him; and as a proximate result thereof, decedent was killed by a passing automobile shortly thereafter.

16. By reason of the aforedescribed acts and omissions of defendants, decedent, whose damages are claimed through his personal representatives, was deprived of his life and thereby sustained economic and hedonic losses, all to decedent's damage in an amount to be proved.

17. By reason of the aforedescribed acts and omissions of defendants, plaintiffs were required to retain an attorney to institute and prosecute the within action, and to render legal assistance to plaintiffs that they might vindicate the loss and impairment of their and decedent's rights, and by reason thereof, plaintiffs request payment by defendants of a reasonable sum for attorney's fees pursuant to 42 U.S.C. Section 1988.

Third Cause of Action

Violation of Plaintiffs' Civil Rights, U.S.C. §1983

(All Plaintiffs vs. All Individual Defendants)

18. Plaintiffs replead each and every allegation contained in paragraphs 1 through 12, and 17, and by this reference, incorporate the same herein and make each a part

hereof.

19. At or about the aforementioned time, date and place, defendants RODRIGUEZ, DIMARZO, LAMMERS, and DOES 1-10 deprived plaintiffs of rights, privileges and immunities guaranteed by the Fourteenth Amendment to the United States Constitution in that
defendants arrested and detained and imprisoned decedent for public intoxication on the grounds that he was so intoxicated that he was unable to care for his own safety or the safety of others; defendants were called to the scene because of decedent's inebriated state, and they assumed complete custody and control of decedent by handcuffing him and locking him in their patrol car so that no other person could render assistance to decedent who was extremely intoxicated; having established a special relationship with decedent, defendants took him from Motel 6, the location where he had been residing and was known to other occupants, and although they knew that his roommate was present and able to care for him, defendants transported him to a location at and near 12056 Whittier Boulevard in the City of Whittier, a heavily-traveled traffic artery, where, notwithstanding his obvious inability to care for his own safety or the safety of others, defendants knowingly, intentionally and with reckless disregard of and deliberate indifference to the rights of plaintiffs, defendants released and ejected decedent from their patrol car and abandoned him notwithstanding his obvious inability to care for his own safety or the safety of others, and knowing that decedent was so disabled, they placed him in a position of peril and increased the risk of harm to him; and as a proximate result thereof,

decedent was killed by a passing automobile shortly thereafter.

20. By reason of the aforedescribed acts and omissions of defendants, plaintiffs, in their individual capacities, have been and will forever be deprived of the love, affection, society, companionship, support and pecuniary benefits of decedent, and of their familial relationship with him, all to plaintiffs' damage in an amount to be proved.

WHEREFORE, plaintiffs pray for damages as follows:

1. General damages for plaintiffs' loss in a sum to be proved;
2. General damages for decedent's loss in a sum to be proved;
3. Funeral, burial, and incidental expense, as proved;
4. Loss of income and financial support, as proved;
5. Costs of litigation;
6. Reasonable attorney's fees;
7. Such other and further relief as the Court deems appropriate and just.

DATED: March 17, 1993

MANES & WATSON

By_____
CAROL A. WATSON
Attorneys for Plaintiffs